Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon Virginia, Inc.,	)	
Verizon Long Distance Virginia, Inc.,	)	WC Docket No. 02-214
Enterprise Solutions Verizon Virginia, Inc.,	)	
Verizon Global Networks, Inc., and	)	
Verizon Select Services of Virginia, Inc., for	)	
Authorization To Provide In-region, InterLATA	)	
Services In Virginia	)	

REPLY COMMENTS OF US LEC CORP.

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Dated: September 12, 2002

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SUMMARY

As is evident from both Comments in this proceeding, and the record in the Commission's recent Virginia arbitration proceeding, obtaining interconnection agreements with Verizon that reflect the prevailing law is an arduous process filled with much uncertainty. Despite the Commission's clear rulings on the issues of geographically relevant interconnection points ("GRIPs"), virtual GRIPs ("VGRIPs") and virtual foreign exchange ("virtual FX"), and representations by Verizon in this proceeding that it will make service offerings and arrangements from the Virginia arbitration available to other CLECs, it is still far from certain that Verizon will fully comply with the arbitration order. In fact, Verizon has recently specifically stated that the arrangements it will make available from the Virginia arbitration do not include accepting financial responsibility for transporting traffic to the single point of interconnection and providing reciprocal compensation for virtual FX traffic.

Verizon's statements reinforce the concerns raised by US LEC in its initial Comments. Until Verizon unequivocally confirms that it will make available the Commission's rulings in regard to GRIPs, VGRIPs, and virtual FX it cannot be found to have fully complied with the *Virginia Arbitration Award.* Moreover, failure to incorporate these resolutions will preclude a finding of checklist compliance in regard to Checklist Items 1 and 13.

US LEC also expresses its concern that the combined effect of the Commission's decisions not to address Verizon's "no facilities available" high capacity facility policy and special access provisioning leaves Verizon's performance in regard to a substantial amount of high capacity facility orders unchecked. The Commission can no longer avoid consideration of these issues as the Virginia hearing examiner found that Verizon's high capacity facility provisioning had "a significant and adverse impact on competition in Virginia." Until Verizon's

deficiencies in this area are addressed and rectified, Verizon cannot be found to have opened the local market in Virginia to competition.

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REPLY COMMENTS OF US LEC CORP.

US LEC Corp. ("US LEC") submits these reply comments concerning the Application by Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia, Inc., Verizon Global Networks, Inc., and Verizon Select Services of Virginia, Inc., for Authorization To Provide In-region, InterLATA Services In Virginia ("Application").[1] For the reasons stated in these reply comments, and its initial comments, the Commission should deny the Application.

I. VERIZON FAILS TO DEMONSTRATE FULL COMPLIANCE WITH THE COMMISSION'S *VIRGINIA ARBITRATION ORDER* AND THEREFORE DOES NOT MEET THE REQUIREMENTS OF THE CHECKLIST ITEMS 1 AND 13

In its Comments,[2] US LEC stated that "the Commission should require Verizon to state that it will implement the *Virginia Arbitration Order*[3] unconditionally in all

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[1] Comments Requested on the Joint Application by Verizon Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Virginia, Public Notice, WC Docket No. 02-214, DA 02-1893, released Aug. 1, 2002.

[2] WC Docket No. 02-214, Comments of Starpower Communications, LLC and US LEC Corp. (August 21, 2002).

respects, and especially with respect to GRIPs, VGRIPs, and virtual FX before making any determination that it has complied with that decision."[4] US LEC argued that "the Commission should require Verizon to state explicitly that it will drop its GRIPs, VGRIPs, and virtual FX positions in Virginia and region-wide."[5] Only such an action, US LEC contended, could provide an assurance that Verizon would fully comply with the terms of the *Virginia Arbitration Order*. US LEC demonstrated that it had every right to be wary of Verizon's compliance given Verizon's history in regard to interconnection agreement negotiations, particularly in regard to GRIPs and virtual FX. As US LEC noted, "Verizon's attempt over the last few years to impose its view concerning GRIPs and virtual FX have been major stumbling blocks in efforts by CLECs to obtain new interconnection agreements from Verizon for Virginia and other states."[6] WorldCom noted that it had been seeking a new interconnection agreement in Virginia for two and half years, but "Verizon has thrown up constant roadblocks to completion of a reasonable agreement."[7] WorldCom demonstrated how Verizon would often take extreme positions in its negotiations. For instance, as WorldCom describes, "rather than agreeing to a single point of interconnection per LATA as the Act and Commission regulations require

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[3] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, DA 02-1731 (Jul. 17, 2002) ("*Virginia Arbitration Order*").

[4] Starpower/US LEC Comments at 3.

[5] *Id.* at 2. GRIPs stands for "geographically relevant interconnection points" and FX stands for foreign exchange.

[6] *Id.*

[7] WC Docket No. 02-214, Comments of WorldCom, Inc. at 8 (Aug. 21, 2002) ("WorldCom Comments").

. . . Verizon insisted on multiple interconnection points or the financial equivalent of multiple interconnection points."[8]

Verizon's actions since US LEC filed its initial Comments have done little to dispel US LEC's concerns and, in fact, suggests that Verizon may not relinquish its position on GRIPs, VGRIPs and virtual FX. On August 1, 2002, Verizon issued an industry letter to CLECs informing them that it was in the process of developing interconnection agreements in accordance with the Commission's decision in the *Virginia Arbitration Award*, and in the interim, "CLECs in Verizon's former Bell Atlantic service territory in Virginia also may request in interconnection negotiations those service offerings and arrangements that the FCC found in the *VA Consolidated Arbitration* to be required under applicable law, but which are not currently incorporated in any existing interconnection agreement in Virginia."[9] Verizon then proceeded to list the service offerings and arrangements that it was making available. The attachment did not reference the Commission's resolutions on the GRIPs, VGRIPs, and virtual FX issues.

On September 6, 2002, Verizon filed a letter with the Maryland Public Service Commission in an arbitration proceeding with US LEC that specified that the 16 service offerings and arrangements listed in the attachment to the August 1st letter "do *not* include the acceptance of financial responsibility for transporting traffic to a single IP per LATA (Issues 1 and 2), nor the payment of reciprocal compensation on Virtual FX traffic (Issue 6)."[10] As US LEC suspected in its initial Comments, Verizon appears to be

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[8] WorldCom Comments at 8-9.

[9] Exhibit A, August 1, 2002 Verizon Industry Letter at 1.

[10] Exhibit B, *In the Matter of the Arbitration of US LEC of Maryland, Inc. v. Verizon Maryland Inc. Pursuant to 47 U.S.C. § 252(b)*, Maryland Public Service Commission Case 8922,

evidencing an intention not to comply fully with the *Virginia Arbitration Award.* At the very least, Verizon's statements create more uncertainty as to whether it will make the Commission's resolutions on these issues available to CLECs, and until Verizon unequivocally states that it will make the resolutions available it cannot be in compliance with checklist items 1 and 13.

Verizon's statements to the Maryland PSC controvert what Verizon has represented to this Commission in this proceeding. Verizon noted in its application:

> In the interim until the relevant agreement is completed and approved, CLECs in Verizon's former Bell Atlantic service territory also may request in interconnection negotiations those service offerings and arrangements that the Commission found in the Virginia Arbitration Order to be required by applicable law, but which are not currently incorporated in any existing interconnection agreement in Virginia. See id. ¶ 14. Verizon is sending an industry letter advising CLECs in Virginia that Verizon will accept such requests from CLECs. See id.[11]

Verizon clearly is not making available those arrangements that the Commission found to be required by applicable law.

In the *Virginia Arbitration Award*, the Commission found:

> [w]e find that the petitioners' proposed language more closely conforms to our existing rules and precedent than do Verizon's proposals. Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more

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September 6, 2002 Letter from Scott H. Angstreich, Counsel for Verizon Maryland Inc. to Felicia L. Greer, Maryland Public Service Commission at 1. (emphasis in original).

[11] Verizon Application at 13.

> consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.[12]

By stating that "the acceptance of financial responsibility for transporting traffic to a single IP per LATA" is not among the list of items that CLECs can request in interconnection negotiations, Verizon is not making available the arrangements that the Commission found to be required by applicable law in the *Virginia Arbitration Award.* Moreover, by failing to make this arrangement available, Verizon demonstrates non-compliance with Checklist Item 1 that deals with interconnection and Checklist Item 13 that deals with reciprocal compensation. To satisfy its obligations under Checklist Item 1 – Interconnection – a RBOC must provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of sections 251(c)(2).[13] By failing to accept its financial responsibility for transporting traffic to the single point of interconnection, and thereby forcing a CLEC to utilize multiple points of interconnection, Verizon fails to meet the requirements of Checklist Item 1. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[14] Section 252(d)(2)(A) provides that "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities

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[12] *Virginia Arbitration Award*, ¶ 53.

[13] *SBCTX Order* at ¶ 65. Verizon "retains at all times the ultimate burden of proof that its application satisfies all of the requirements of Section 271." *Id.* at ¶ 47.

[14] 47 U.S.C. § 271(c)(2)(B)(xiii).

of calls that originate on the network facilities of the other carrier . . . ."[15] The Commission has noted that in regard to reciprocal compensation requirements under Checklist Item 13, a BOC is required to follow "states' interpretations and requirements promulgated under their interpretation of interconnection agreements . . . ."[16] By unlawfully imposing costs of transport on CLECs for traffic originating on Verizon's network, Verizon is violating the Commission's rules for Section 251(b)(5) traffic.

Likewise in regard to virtual FX traffic, the Commission noted that Verizon "has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes."[17] Under the current system, Verizon itself concedes that it is obligated to pay reciprocal compensation for virtual FX calls.[18] Verizon then clearly has no basis to exclude from the list of available arrangements the payment of reciprocal compensation on virtual FX traffic. Until Verizon makes available language providing for such compensation, Verizon fails to meet the requirements for Checklist Item 13.

As WorldCom noted in its Comments, the Commission requires in regard to checklist items that:

> [t]he BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand at an acceptable level of quality.[19]

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15 47 U.S.C. § 252(d)(2)(A).

16 In this case, the Commission is taking the role of the state in regard to setting the obligations.

17 *Virginia Arbitration Award*, ¶ 301.

18 *Virginia Arbitration Award*, ¶ 286.

19 WorldCom Comments at 2, *quoting Maine 271 Order*, Appendix D, ¶ 5.

In regard to Checklist Items 1 and 13, because Verizon has stated that it is not making available the Commission's ruling in the Arbitration Award in regard to the GRIPs, VGRIPs, and virtual FX issues, it has not demonstrated that it has "a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." Verizon's statements that it will provide conforming agreements are not reliable given its past history in regard to interconnection agreement negotiations, and particularly since it has taken the Commission's resolution of the GRIPs, VGRIPs, and virtual FX issues off the table for negotiations.

Verizon contends that it has entered into interconnection agreements with CLECs in Virginia that allow the CLEC to select a single point of interconnection in the LATA.[20] The issue is not simply, however, use of a single point of interconnection but who is financially responsible for the transport to the single point of interconnection. In Pennsylvania, for example, the interconnection agreements that Verizon claimed allowed for a single point of interconnection per LATA require CLECs to either collocate at multiple points in a LATA or pay for Verizon's cost of transport.[21] As noted above, requiring CLECs to pay for Verizon's cost of transport to the single point of interconnection does not conform to the Commission's rules. The Commission has clearly delineated the network architecture and compensation responsibility that is supported by its rules, and until Verizon demonstrates the existence of interconnection

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[20] Verizon Application at 18.

[21] CC Docket No. 01-138, Comments of Sprint Communications, L.P. at 8 (July 11, 2001) ("*Sprint PA Comments*"). While US LEC has not done a survey of Virginia interconnection agreement(s) allowing for a single point of interconnection one anticipates that the case would be the same.

agreements that reflect the Commission's ruling it cannot be found to be in compliance with the requirements of Section 271.

As WorldCom notes, the rulings the Commission made in the Virginia arbitration were based "on current Commission rules and precedent" and rejected any "proposals that extend beyond existing law."[22] Thus, until Verizon alters its interconnection agreements to include concrete and specific legal obligations to furnish the required checklist items with specific terms and conditions, its application cannot be found to be in compliance with Checklist Items 1 and 13.[23] As WorldCom correctly argued, Verizon knew it needed to conform its interconnection agreements to the findings of the Commission in the Virginia arbitration, and should have waited until the complying provisions were incorporated into interconnection agreements before applying.[24] The process of finalizing the interconnection agreements in the arbitration is far from a *fait accompli* as competing "conforming" interconnection agreements may be filed in the arbitration. In addition, Verizon has filed for reconsideration of the Order and may also ultimately appeal the Order to the courts.[25] Thus, there remains much uncertainty for CLECs on these vital issues, particularly given Verizon's removal of the GRIPs, VGRIPs, and virtual FX issues from the negotiating table. As WorldCom astutely contends, "Verizon should not be allowed to game the system so that its long distance entry coincides with or precedes such compliance."[26] The Commission should require Verizon to demonstrate unequivocally that it will comply with the Commission's resolution on the GRIPs, VGRIPs, and virtual FX issues before determining whether its

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22 WorldCom Comments at 3.
23 *See* WorldCom Comments at 4-5.
24 WorldCom Comments at 6-7.
25 WorldCom Comments at 6.

application supports Section 271 authority in Virginia. Verizon's present position of refusing to comply with the Arbitration Order clearly disqualifies it from Section 271 approval.

II. SYSTEMIC DEFICIENCIES IN VERIZON'S PROVISION OF HIGH CAPACITY FACILITIES MANDATE DENIAL OF VERIZON'S APPLICATION

In its Comments, US LEC noted how Verizon's "no facilities" policy in regard to DS1 loops and Verizon's provisioning of special access circuits were impeding competition in Virginia.[27] The Commission has previously declined to address the issues pertaining to Verizon's "no facilities available" policy and special access provisioning in the context of its review of a Section 271 application.[28] The combined effect of these decisions is that a substantial amount of CLEC orders for high-capacity facilities are removed from the Commission's Section 271 review. The Commission, however, can no longer continue to ignore these vital issues in regard to high-capacity facilities. The Hearing Examiner found that Verizon's policy in regard to high capacity circuits has "a

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[26] WorldCom Comments at 9.

[27] Starpower/US LEC Comments at 4-14.

[28] *See, e.g., In the Matter of Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, (CC Docket No. 01-138), ¶ 92 ("*Pennsylvania 271 Order*").; *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 211 (Apr. 16, 2001) ("*Verizon MA 271 Order*"). As Allegiance notes, the basis for the Commission's refusal to consider Verizon's "no facility" policy no longer applies. The Commission termed the "no facilities" policy a "new interpretive dispute" that has not been addressed by the Commission, and therefore should not be considered in the context of a Section 271 application. *PA 271 Order* at ¶ 92. In the Virginia arbitration, the Commission rejected Verizon's right to refuse to provision a loop due to the fact that multiplexing equipment is absent from the facility. This covers two of the six reasons Verizon bases its finding of "no facilities available" upon. Allegiance Comments at 5-6. Thus, the Commission should find, at a minimum, that Verizon's continued application of the "no facilities" policy to facilities lacking multiplexing equipment as a violation of the checklist.

significant and adverse impact on competition in Virginia."[29] The only reason the Hearing Examiner found Verizon's application to be checklist compliant on this issue is because the FCC has approved this policy in other recent Section 271 applications.[30] It is ironic that Section 271, which is the core of the 1996 Act's market-opening provisions, has been rendered incapable of addressing such a vital competitive issue.

The amount of DS1 loops involved is staggering. The Hearing Examiner in the VA SCC proceeding addressing Verizon's Section 271 application found that from November 2001 to March 2002, Verizon "confirmed orders for UNE DS-1s that if provisioned, would have provided the equivalent capacity of 117,240 voice grade circuits."[31] Verizon testified in the state proceeding that it was currently installing only 100 to 200 high capacity UNE loops per month in the entire state of Virginia.[32] Thus, a substantial amount of orders for DS1 loops are clearly not being provisioned.

Cavalier reports a rejection rate of as high as 39% on its UNE DS1 orders in Virginia due to "no facilities" being available.[33] Allegiance notes its rejection rate ranged as high as 22%.[34] Covad reports a rejection rate of 46%.[35] As Allegiance noted, Verizon's performance is far out of line with the performance of other RBOCs. Allegiance noted that in May, 2002, Verizon South rejected 23% of Allegiance's UNE

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[29] Starpower/US LEC Comments at 6, *citing, In the matter of Verizon Virginia Inc., to verify compliance with the conditions set forth in 47 U.S.C. § 271(c)*, Case No. PUC-2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner (Va. SCC July 12, 2002) at 2 ("*Virginia SCC Report*")

[30] *Id.*

[31] WC Docket No. 02-214, Comments of AT&T Corp. at 14 (Aug. 21, 2002) ("AT&T Comments"), *citing, Virginia SCC Report* at 116.

[32] WC Docket No. 02-214, Comments of Allegiance Telecom of Virginia, Inc. at 7 (Aug. 21, 2002) ("Allegiance Comments"), *citing*, Hearing Tr. 825.

[33] Allegiance Comments at 4, *citing, Virginia SCC Report* at 116.

[34] Allegiance Comments at 4.

[35] WC Docket No. 02-214, Comments of Covad Communications Company at 24 (Aug. 21, 2002) ("Covad Comments").

DS1 orders, while all other RBOCs combined rejected just 3% of Allegiance's UNE DS1 orders.[36]

Thus, a substantial number of DS1 loops are removed from checklist evaluation because they are not captured in applicable metrics due to facilities purportedly not being available. CLECs are either forced to forego the order, or purchase the DS1 facilities as special access circuits.[37] This renders the situation all the more problematic because the Commission does not evaluate the applicant's provisioning of special access circuits.

It is clear that the Commission must begin to evaluate an applicant's special access provisioning in the context of a Section 271 application. The basis for the Commission's distinction between special access and UNEs in the context of a Section 271 application no longer remains tenable as competitors are being forced to purchase substantial amounts of DS1 UNE facilities via Verizon's special access tariff. In addition, Allegiance notes that Verizon is considering requiring a CLEC to maintain a special access circuit for one year prior to converting the circuit to a UNE.[38] Currently Verizon is requiring CLECs to wait three months to convert the special access circuits.[39] While these policies are patently unlawful, they demonstrate all the more why performance metrics for special access circuits are vital and should be implemented and form a basis of evaluation in the Section 271 context. Without these metrics, Verizon's performance in regard to ordering, provisioning, maintaining, repairing and billing for special access circuits goes unchecked.

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36 Allegiance Comments at 4.
37 Allegiance Comments at 8; Covad Comments at 25.
38 Allegiance Comments at 9.
39 Covad Comments at 24-25.

In its initial Comments, US LEC noted how in the period of January 2002 to May 2002, Verizon failed to provide a firm order confirmation that matched US LEC's requested due date or the customers desired due date on 37% to 66% of US LEC's orders.[40] In the same period, the acceptance date of the order (the date of actual delivery of the circuit) did not match the requested due date on 6% to 19% of the orders.[41] Thus, Verizon's special access provisioning builds in more delays into the process. One can only imagine the typical scenario a CLEC customer will likely face. It requests a high capacity circuit. The CLEC places the order for the circuit, and is subsequently told that the facility is not available as a UNE. The CLEC will have to cancel the UNE order, resubmit the order as a special access order, and endure the further delays described above. The CLEC customer would have to patiently endure this process. It is no wonder that the Virginia hearing examiner found Verizon's high capacity facility provisioning to have a significant and adverse impact on competition.

Forcing the CLECs to purchase the capacity as special access results in a higher revenue stream for Verizon and more expensive costs for the CLECs since special access is generally priced 50% higher than UNEs. Verizon not only introduces time consuming delays into its provisioning process but also forces its competitors to pay higher prices than those contemplated in the UNE pricing proceedings in order to shorten provisioning intervals. And, as discussed above, Verizon is also refusing to provide conversion of circuits on a reasonably timely basis.

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[40] Starpower/US LEC Comments at 12. In four of the five months, the FOCs did not meet the requested due date over 50% of the time.

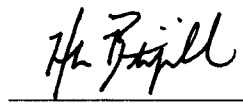
[41] *Id.* at 13.

US LEC also chronicled how during the period January 2002 to May 2002, it experienced 168 outages on its circuits that were due to problems on Verizon's network and the mean time to repair in Virginia was 4.3 hours.[42] Once again the high frequency and long duration of these outages go unchecked in the Section 271 context even though these outages would clearly imperil competition. Verizon has no incentive to improve this service quality until the Commission begins to track Verizon's provisioning of special access circuits and uses this as part of its evaluation of Section 271 performance. The Commission should evaluate Verizon's special access provisioning in Virginia, and deny Verizon's application until Verizon is able to demonstrate that CLECs are able to obtain such facilities on par with Verizon.

III. CONCLUSION

For the foregoing reasons, US LEC Corp. urges the Commission to deny Verizon's Application for Provision of In-Region InterLATA Services in Virginia.

Respectfully submitted,



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[42] Starpower/US LEC Comments at 13.

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I, Harisha Bastiampillai, hereby certify that on September 12, 2002, I caused to be served upon the following individuals the Reply Comments of US LEC Corp. and supporting materials in WC Docket No. 02-214.

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